



April 28, 1999

Mr. Benjamin Martinez
City Attorney
City of Eagle Pass
P.O. Box 4019
Eagle Pass, Texas 78853-4019

OR99-1165

Dear Mr. Martinez:

You ask whether certain information is subject to required public disclosure under the Texas Public Information Act, chapter 552 of the Government Code. Your request was assigned ID# 123682.

The City of Eagle Pass (the "city") received an open records request for certain records pertaining to an internal affairs investigation conducted by the city's police department. You seek to withhold the requested information pursuant to sections 552.108(a)(2) and 552.108(b)(2) of the Government Code.

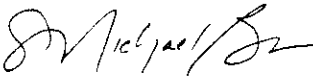
Section 552.108(a) of the Government Code excepts from required public disclosure "[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime. . . ." Section 552.108(b) excepts from public disclosure "[a]n internal record or notation of a law enforcement agency or prosecutor that is maintained for internal use in matters relating to law enforcement or prosecution" Both sections 552.108(a)(2) and 552.108(b)(2) apply only to "an investigation that did not result in conviction or deferred adjudication."

Internal affairs investigations are generally administrative, as opposed to criminal, in nature. Unless the internal affairs investigation results in a criminal investigation, we do not believe that either section 552.108(a)(2) or 552.108(b)(2) was intended to protect records of such an investigation. *See Morales v. Ellen*, 840 S.W.2d 519, 526 (Tex. App.--El Paso 1992, writ denied) (predecessor statute to section 552.108 not applicable where no criminal investigation resulted). You have not demonstrated, nor does it appear to this office, that the records at issue pertain to a criminal investigation. Consequently, the city may not withhold the requested records pursuant to either section 552.108(a)(2) or 552.108(b)(2). The records at issue therefore must be released to the requestor in their entirety.¹

¹We note that some of the records at issue contain individuals' social security numbers. This office concluded in Open Records Decision No. 622 at 3 (1994) that amendments to the federal Social Security Act, 42 U.S.C. § 405(c)(2)(C)(vii)(I), make confidential any social security number obtained or maintained by any

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Sincerely,



Michael J. Burns
Assistant Attorney General
Open Records Division

MJB/RWP/eaf

Ref.: ID# 123682

encl.: Submitted documents

cc: Mr. Earl Herring
Herring Law Firm
505 Quarry Street
Eagle Pass, Texas 78852
(w/o enclosures)

“authorized person” pursuant to any provision of law, enacted on or after October 1, 1990, and that any such social security number is therefore excepted from required public disclosure by section 552.101 of the Government Code, which excepts “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.”

It is not apparent to us that the social security numbers contained in the records at issue were obtained or is maintained by the city pursuant to any provision of law enacted on or after October 1, 1990. You have cited no law, nor are we aware of any law, enacted on or after October 1, 1990, that authorizes the city to obtain or maintain a social security number. Therefore, we have no basis for concluding that the social security numbers at issue were obtained or are maintained pursuant to such a statute and are therefore confidential under section 552.101 of the Government Code in conjunction with 405(c)(2)(C)(vii)(I). We caution the city, however, that section 552.352 of the Government Code imposes criminal penalties for the release of confidential information. Prior to releasing the social security numbers, the city should ensure that these numbers were not obtained nor are maintained by the city pursuant to any provision of law, enacted on or after October 1, 1990.